

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 7726 of 1989****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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SHRIMATI L J GAMIT - Petitioner(s)**Versus****STATE OF GUJARAT & 3 - Respondent(s)**

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Appearance :

MR MM JADEJA for Petitioner(s) : 1,

MR L B DABHI, Ld.AGP for Respondent(s) : 1 - 2.

RULE NOT RECD BACK for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**Date : 08/02/2006****ORAL JUDGMENT**

1. The petitioner has filed the present petition under Article 226 of of the Constitution of India seeking direction to the respondent to consider the

case of the petitioner for the promotional post of sister-in-charge of the Old Civil Hospital on the same footing as that of juniors namely the respondent nos.3, 4 and others. The petitioner has also sought further direction to consider the petitioner to be promoted to the post of Sister-in-charge, Old Civil Hospital, Surat from the same date as her junior was given on the basis of continuous officiation and confer upon her all the service benefits like pay fixation, salary arrears, seniority etc., on that basis. The petitioner has also prayed for the mandatory interim order directing the respondent no.2, to post the petitioner on the post of sister-in-charge, i.e. her promotional post as per order dated 16.09.1989 at Surat.

2. The petition was admitted and rule was issued on 1.3.90. The court has granted ad-interim relief in terms of Para:17(e)whereby the respondent no.2 was restrained from proceeding with the filling up of vacancies of Sister-in-charge working at Surat to the post of Matron.

3. It is the case of the petitioner that in the year 1979, the petitioner alongwith other staff nurses were transferred to the department of Health and Planning, Old Civil Hospital, Surat, by letter dated 2.7.1979. It is also the case of the petitioner that respondent department did not pay any heed to her request to continue her at Old Civil Hospital, at Surat on the promotional post deliberately inasmuch as in the year 1982 she was ordered to be posted at Bhilad, Sabarkantha District at promotional post and she submitted her protest. She has further submitted that before the petitioner was promoted to the post of Sister-in-charge by order dated 16.09.1989 posting her at Bhilad, 13 staff Nurses namely Smt.J.W.Damor, R.R.Naiya and others, juniors to the petitioner as per seniority list issued by the department at that relevant period, were promoted to the post of Sister-in-charge during the period from 1978 to 1982 and the petitioner who had served the department right from 1970 diligently and honestly and who had a clean confidential record was left

out from consideration at the relevant period.

4. It is further stated that the petitioner was arbitrarily and illegally superseded. The petitioner submitted representation to the higher authority for redressal of her grievance on this score but no reply was issued. The petitioner has submitted that she has thus been prejudiced beyond any repair after the promotion of her juniors and such promotions of her junior are in contravention of Articles 14 and 16 of the Constitution of India by affecting adversely the legitimate rights of promotion which had accrued to the petitioner at that relevant stage. The petitioner has further submitted that ultimately her case of promotion was considered in the year 1989 i.e. after the period of 10 years of her supersession. But by this time, unsurmountable domestic trouble had cropped up in her family. The petitioner had two years' child then with damaged mind i.e. as good as lunatic, unable to speak or eat by himself and remained confined to bed. Moreover, the petitioner's husband was seriously ill as suffering from Pluracy and

other incurable diseases. The respondent department was in the know of petitioner's domestic trouble and her helplessness to shift out of Surat even for promotional post, inasmuch as she was required to attend to her child and husband personally all the time. In that view of the matter, she had submitted a specific request to the department that in case if her case for promotion were considered and she were promoted, she must be posted to the promotional post, namely sister-in-charge whenever there is a vacancy in Surat. However, the said request was not considered which constrained the petitioner to approach this court by way of filing present petition.

5. An affidavit-in-reply was filed as late as on 13th August, 2001. Mr. L.B.Dabhi, learned Asst.Governmetn Pleader appearing for respondent has submitted that it was true that in the year 1979 the petitioner's case for promotion was not considered, but it cannot be said that the petitioner was arbitrarily or illegally superseded. He has further submitted that case of the

petitioner was considered subsequently and she was posted at Bhilad as Head Nurse vide order dated 03.05.1982. The petitioner had not accepted the promotion and therefore she was debarred from promotion vide this commissionerate office order dated 31.07.82. He has further submitted that she was also considered for promotion, but she had refused to accept promotion. If the petitioner had accepted the promotion in the year 1982 the department must have considered seniority in the cadre of Head Nurse as demanded by the petitioner. He has further submitted that it is not right of the petitioner to get the promotion at the place convenient to the petitioner. He has further submitted that place of posting in promotion is not a matter of right. If the employees are not in position to accept promotion due to their family circumstances than it is open to them to refuse promotion. He has further submitted that petitioner had not accepted promotion given in the year 1982 but was promoted after the year 1989. In the affidavit-in-reply a chart is given which shows that the period 1982 to 1998 in all 9 times, the

petitioner was given promotion and almost in all cases except the last one, the promotion was refused. It is further submitted that lastly the petitioner was promoted at Jamnagar vide order dated 31.03.1998. After promotion to the Jamnagar, petitioner's case for the transfer has been considered and she has been transferred at New Civil Hospital, vide order dated 28.11.1999. The petitioner is now working at New Civil Hospital from 03.12.1999.

6. After having gone through the memo of petition, affidavit-in-reply and after having heard the learned Assistant Government Pleader, the court is of the view that though the petitioner's case was not considered for promotion in the year 1979, the petitioner has not challenged the said action of the respondent authority till the year 1989. Since, in the year 1982 a chance was given to the petitioner for promotion for which the petitioner has refused the same. There is no inherent right of the petitioner to get the promotion at the place of her choice. Because of family circumstances, if the

petitioner has not accepted the promotion the petitioner has no right to may any grievance on that ground. Since the grievance of not giving promotion in the year 1979 is raised for the first time in the year 1989, the Court is not inclined to entertain at belated stage and since in the year 1982, petitioner has been given all chances for promotion, and the same were refused and since the petitioner has been initially posted at Jamnagar to the promotional post and upon her request she was transferred to Surat, the court is of the view that the grievance of the petitioner by and large is redressed. In any case, since the petitioner is working at Surat at present, the court does not interfere in the matter. The petition is dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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